HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1157 of 2002 (SB)

Sudam Maity s/o Sri Haren Maity
Village Sira, P.O. Tengunia, P.S. Cantai,
District Midnapore (West Bengal) …..Petitioner

Versus

1. Union of India
2. Company Commander4, Cassio Coy 2,
Training Battalion, Bengal Engineering Group
Centre, Roorkee ….Respondents

Sri M.S. Pal, learned counsel for the petitioner.
Standing counsel, Central Government for the respondents.

Dated: 21.2.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.S. Pal, Sr. Advocate counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for issuance of a writ of certiorari quashing the order dated 26.2.2002, annexure-1 passed by the respondent no. 2.

Briefly stated, the petitioner was selected for recruitment in the Army as a Soldier (GD) on 19.2.2000. Before his selection the petitioner gave a written test, physical test and thereafter, he was medically examined. The petitioner was discharged from the service on account of second medical test. During the second medical examination at Military Hospital, Roorkee and Bareilly, the petitioner came to know that he was having flat foot and that is why he was being examined. The contention of the petitioner is that the respondent no. 2 has no right to pass the said order against the petitioner as the medical

reports are contradictory to each other and the opinion of the doctors of both Military Hospitals differ from each other.

The respondents have filed counter affidavit and admitted in paragraph 6 of the counter affidavit that the petitioner was sent for medical examination to Military Hospital, Roorkee on 20th June 2000 and discharged on 22 June 2000. He was referred to Military Hospital Bareilly for opinion of Senior Advisor Surgery as a case of Flat Feet on remedical. The petitioner was admitted in Military Hospital Bareilly on 23rd June 2000 and discharged on 3rd July 2000, where he was declared unfit for Flat Feet by the Classified specialist and sent back to the Military Hospital, Roorkee for further disposal. Thereafter the petitioner was sanctioned for invalided out.

I have heard the learned counsel for the parties and have gone through the documents on the record. Rule 15 of Army Rules, 1954 provides as under:-

> *"[15-A. Release on medical grounds.-(1) An officer who is found by Medical board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.*
>
> *(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service, every such notice shall also specify that the officer may, within fifteen days of the date of receipt of*

the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the Medical Board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interest, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition."

In the present case there are two contradictory reports of the Doctors. The first medical examination of the petitioner was conducted in February 2000 and the petitioner was found fit for recruitment for the Army.

However, the second medical examination was conducted in June 2000, in which the petitioner was declared unfit due to Flat feet. Thus evidently there are two conflicting medical opinion of the Doctors and as such the authorities concerned ought to have obtained the opinion of Medical Board instead of discharging him from service. It will be in the interest of justice if the petitioner be got examined by a Medical Board for a definite opinion regarding his physical fitness for military service.

In view of above, a writ of mandamus is issued directing the respondents to constitute a Medical Board and get the petitioner examined before the medical Board, within a month after obtaining copy of this judgment.

Accordingly, the writ petition is allowed.

Dated: 21.3.2006 **Rajesh Tandon J.**

*Dhyani